

Bow, New Hampshire  
Article XVII: Wetlands Conservation District  
Contact: Kimon Koulet  
Lakes Regional Planning Commission  
(603)279-8171  
Zoning Ordinance

## ARTICLE XVII: WETLANDS CONSERVATION DISTRICT

### 17.01 AUTHORITY AND PURPOSE:

By the authority granted in N.H. RSA 674:16-17 and 674:20-21, and in the interest of public health, safety and general welfare, the Wetlands Conservation District is hereby established to regulate the uses of lands within the District. It is intended that this article shall:

- (a) Control the development of structures and land uses within the Wetlands Conservation District which would contribute to the pollution of surface and ground water.
- (b) Prevent the destruction of wetlands which provide flood protection, ground water recharge, pollution abatement, and the augmentation of stream flow during dry periods, and which are 'Important for such other reasons as those cited in RSA 483-A: 1-b.  
  
Prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of unwise use of water resources.
- (d) Encourage those uses that can be appropriately and safely located in the Wetlands Conservation District.
- (e) Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas.
- (f) Preserve and enhance those aesthetic values associated with the water resources zone of this Town.
- (g) Protect wildlife habitats and maintain ecological balances.
- (h) Protect unique and unusual natural areas.

### 17.02 DEFINITIONS:

#### 17.02.01

17.02.02

**FEDERAL MANUAL FOR IDENTIFYING AND DELINEATING JURISDICTIONAL WETLANDS:** The most recent document prepared by the Federal Interagency Committee for Wetland Delineation detailing the criteria and the methodology for delineating wetland boundaries. A copy of this report is on file at the Bow Town Hall.

**HIGH INTENSITY SOIL MAPS FOR NEW HAMPSHIRE; STANDARDS AND**

**ORIGINS:** The most recent document prepared by the Society of Soil Scientists of Northern New England (SSNNE) detailing the standards for making high intensity soils maps. A copy of this report is on file at the Bow Town Hall or may be purchased from the Merrimack County Conservation District.

17.02.03

**HYDRIC SOILS** shall be defined as very poorly drained soils, poorly drained soils, and those somewhat poorly drained soils which meet the hydric soils criteria set forth in the 'Federal Manual for Identifying and Delineating Jurisdictional Wetlands.'

17.02.04

**HYDROPHYTIC VEGETATION** shall be defined as macrophytic plant life growing in water, soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Hydrophytic vegetation includes, but is not limited to those plant species listed in the "National List of Plant Species That Occur in Wetlands" with a wetland indicator status of obligate, facultative, and facultative wet.

17.02.05

**NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS; NORTHEAST REGION:** The most recent document prepared by the National and Regional Interagency Review Panels detailing the indicator status of all plants reviewed by the panels. A copy of this report is on file at the Bow Town Hall.

17.02.06

**NEW HAMPSHIRE CERTIFIED SOIL SCIENTIST:** A person qualified soil classification and mapping who is recommended or approved by the New Hampshire Board of Certification of Soil Scientists, RSA 310-A: 75 through 97.

17.02.07 PRIME WETLANDS shall be defined as those areas designated Prime Wetlands within the scope of RSA 483-A, and N.H. Code of Administrative Rules WT 700. These wetlands are described in the Bow Wetlands Report dated December, 1989 as follows:

Wetland Number	Location	Tax Map Sheet No.
56	Three Pond	8, 9, 10, 14, 15
32	Great Meadow Swamp -	33, 38 Woodhill-Hooksett Road
34	Center Brook and Horse Brook	33, 34, 38
35	Bow Bog Brook-upstream of 1-93	34, 35
45	Headwaters of White Brook	13, 18, 23
43	Brown Hill Road and Dunbarton Center Road	13, 18
44	White Rock Brook-Londonderry Tpk., West	13
55	White Rock Brook-Birchdale Road area	3, 4, 5

The topographic definition of each "Prime" Wetland is included separate maps correlated to the report. Both the aforementioned report are incorporated in this ordinance by reference and are on at the Bow Town Hall.,

17.02.08 PRIME WETLANDS BUFFER shall be defined as that area extending one hundred and fifty (150') feet outside and beyond the boundary of each "Prime" Wetland as described in Definition 17.02.07 above.

17.02.09 VERY POORLY~ POORLY AND SOMEWHAT POORLY DRAINED SOILS shall be as defined by the USDA-Soil Conservation Service in the Merrimack County Soil Survey or as further defined in the SSNE report 'High Intensity Soil Maps for New Hampshire: Standards and Origins

17.02.10 WETLANDS shall be as defined in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands". Three technical criteria: hydric soils, hydrophytic vegetation and wetland hydrology are required for the positive identification of a wetland. Therefore, areas that meet these criteria are wetlands.

17.02.11  
WETLANDS CONSERVATION DISTRICT OR DISTRICT

The limits of the Wetlands Conservation District are hereby determined to include Prime Wetlands, Prime Wetlands Buffers, all other Wetlands, and the Wetlands Buffer (described in

18.04.02 C.) including the following:

- (a) All areas delineated on the Bow Wetlands Map, 1989;
- (b) All areas of very poorly drained soils;

Areas of poorly and somewhat poorly drained soils that meet the wetland criteria as defined in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

17.02.12 WETLAND HYDROLOGY shall be defined as permanent or periodic inundation, or soil saturation to within 6 inches of the soil surface at least seven consecutive days during the growing season. See the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" for technical criteria to determine wetland hydrology.

17.02.13 WETLAND SCIENTIST: A person capable of delineating wetlands using the methodology defined in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

#### 17.03 INCORRECTLY DESIGNATED LINES:

17.03.01 When a boundary of the Wetlands Conservation District is disputed, or in the event that an area is incorrectly graphically designated as being a wetland, the Planning Board and/or the Conservation Commission, at the applicants' expense may engage a Wetland Scientist and/or N.H. Certified Soil Scientist to determine the

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precise location of the Wetlands Conservation District boundaries, using the methodology contained in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", on the properties affected. In the alternative, the applicant may hire and pay such a scientist as acceptable to the Planning Board and Conservation Commission to make such determination. A report of their findings shall be submitted to the Planning Board and shall include, if warranted, a revised wetland map of the area in question along with a written report of their on-site field inspection and any data forms completed.

17.03.02 The Planning Board shall adjust the graphic depiction of the boundary of this District, if necessary, based on the evidence provided as set forth above. If the evidence indicates that the boundary or area in question has been incorrectly graphically designated as a wetland, the restrictions contained in this section shall not apply to the area lying outside of the District boundaries as corrected. Conversely, in the event that a wetland is not so graphically

designated, then the restrictions contained in this section shall nevertheless apply. The Planning Board shall reserve the right to withhold action on any plat pending the results of the studies described above or an on-site inspection by the Board or its appointed agent.

#### 17.. 04 REGULATIONS:

##### 17.04.01 PRIME WETLANDS AND PRIME WETLAND BUFFER:

###### A. Permitted Uses

Permitted uses in areas designated as Prime Wetlands and/or Prime Wetlands Buffer are as follows:

- (1) Wildlife habitat development and management.
- (2) Conservation areas and nature trails.
- (3) Cultivation and harvesting of crops according to recognized soil conservation practices including the protection of the "Prime" Wetlands from non-point source pollution caused by fertilizers, pesticides, and herbicides used in such cultivation.

###### B. Conditional Uses

(1) A Conditional Use Permit may be granted by the Planning Board (RSA 674:21 II) for the following purposes:

(a) Forestry and tree farming within the Prime Wetland Buffer' using best management practices in order to protect Prime Wetlands from damage, to

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prevent sedimentation, and to prevent destruction of wildlife habitats, provided that any forestry and/or tree farming activities shall first be reviewed and approved by the Conservation Commission.

(b) The construction of fences, footbridges, catwalks, and wharves, provided:

- (1) the structures are constructed on posts or pilings so as to permit the unobstructed flow of water;
- (2) the natural contour of the Prime Wetland is preserved;

(3) the Conservation Commission has first reviewed and approved the proposed construction; and

(4) the Planning Board has received Conservation Commission approval in writing and has reviewed the proposed construction.

(2) The applicant shall file such information as the Planning Board reasonably requires in order to review an application for a Conditional Use Permit. Prior to the granting of a Conditional Use Permit under this section, the applicant shall submit to the Town a performance Security Bond. The Security Bond shall be submitted and approved prior to issuance of any permit authorizing construction. The Security Bond shall be submitted in a form and amount, with surety and conditions satisfactory to the Conservation Commission and approved by the Planning Board, to ensure that the construction will be carried out in accordance with the approved design.

(3) The Planning Board, on its own or at the request of the Conservation Commission, may require the applicant to submit environmental studies when necessary to evaluate an application made under this section. The cost of these studies shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and the costs incurred for the review of documents required by particular applications.

(4) A Conditional Use Permit may be granted by the Planning Board only after due public notice and a public hearing on the application.

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#### C. Special Exception

(1) Special exceptions shall only be granted by the Zoning Board of Adjustment after due public notice and public hearing for undertaking the following uses in the Prime Wetland Buffer. The application for the special exception must be referred to the Planning Board and the Conservation Commission for review and comment at least thirty (30) days prior to the Zoning Board of Adjustment hearing on the application.

(2) A special exception may be granted for uses which are otherwise allowed in the zone in which the Prime Wetland Buffer is located in the outermost seventy-five (75') feet of the Prime Wetland Buffer provided that all of the following conditions are found to exist:

(a) The lot upon which an exception is sought was an official lot of record, as recorded in the Merrimack County Registry of Deeds prior to January 6, 1990.

(b) The proposed special exception is essential to the productive use of land of the applicant which is not within the Prime Wetland Buffer.

Design and construction methods will be such as to minimize detrimental impact upon the Prime Wetland and the seventy-five (75') feet of Buffer nearest the Prime Wetland; and the site will be restored as nearly as possible to its original condition.

(d) Economic advantage alone is not reason for granting a special exception.

(e) The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Prime Wetland Buffer.

(f) The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Article.

(g) The proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of the Prime Wetland Buffer, the contamination of groundwater, or other reason.

(h) No special exception shall allow disturbance of the seventy-five (75') feet of the Prime Wetland Buffer nearest the Prime Wetland.

(I) When any parcel of land is being developed, whether or not it is in the Wetlands Conservation

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District, no landlocked land or unbuild able lot shall be created that would require a special exception or variance under this Article.

(j) No special exception shall be granted in a Prime Wetland.

(k) No dredging and filling shall be permitted in a Prime Wetland.

(1) No use of the Prime Wetland Buffer shall be allowed by special exception if it would be prohibited from the Wetlands Buffer as described in Section 17.04.02 C.

(3) The Zoning Board of Adjustment may, and upon written request from the Planning Board or Conservation Commission shall, hire a qualified consultant or consultants to prepare such studies as are necessary to determine whether the conditions set forth above have been met. The cost of such studies shall be borne by the applicant.

D.

Pre-existing Uses in the Prime Wetland Buffer Zones

(1) Structures and uses existing or shown on an approved site plan or described in an

outstanding valid building permit as of January 6, 1990 may be constructed or continued provided that the building permit and any extensions of it have not expired and such use shall not be expanded to encroach further upon the Prime Wetland Buffer Zone, except as provided in this ordinance.

(2) Where an existing use within the Prime Wetland Buffer is destroyed or in need of extensive repair due to fire or other casualty it may be rebuilt provided that such rebuilding is completed within one year of the event causing destruction and the new or rebuilt use shall not extend further into the Prime Wetland Buffer area than the original use.

(3) Expansion of an existing use in the Prime Wetland Buffer zone is prohibited unless it qualifies under Sections 17.04.01 A, B, or C.

#### E. Exemption for Residential Structures

Notwithstanding other provisions of this Article, the construction of additions and extensions to one and two family dwellings shall be permitted within the Prime Wetland Buffer provided that:

(1) The dwelling lawfully existed prior to January 6, 1990, and  
(2) The proposed construction conforms with all other applicable ordinances and regulations of the Town of Bow, and

(3) Where an existing residential use in the Prime Wetland Buffer is destroyed or in need of extensive repair due to fire or other casualty, it may be rebuilt provided such rebuilding is completed within two (2) years of the event causing the destruction and the new or rebuilt use shall not extend further into the Prime Wetlands Buffer.

#### 17.04.02 WETLANDS other THAN PRIME WETLANDS

##### A. Permitted Uses

Any of the following uses are permitted in wetlands other than Prime Wetlands:

(1) Any use otherwise permitted by the Zoning Ordinance and State and Federal laws that does not involve the erection of a structure and that does not alter the surface configuration of the land by the addition of fill or by dredging except as a common treatment associated with a permitted use.

(2) Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of the wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation.

(3) Forestry and tree farming using best management practices in order to protect wetlands



and streams from damage and to prevent sedimentation.

(4) Wildlife habitat development and management.

(5) Recreational uses consistent with the purpose and intent of this article as defined in the General Provisions and the Purpose stated in this Article.

(6) Conservation areas and nature trails.

#### B. Conditional Uses

(1) A Conditional Use Permit may be granted by the Planning Board (RSA 674:21 II) for the following purposes:

(a) construction of roads and other access ways;

(b) pipelines, power lines and other transmission lines;

water impoundments and the construction of well water supplies; and

(d) drainage ways to include streams, creeks or other paths or normal run-off water and common agricultural land drainage.

(2) No Conditional Use Permit under this section shall be granted unless all of the following conditions are found to exist:

(a) The proposed construction is essential to the productive use of land of the applicant not within the Wetlands Conservation District.

(b) Design, construction and maintenance will be such as to minimize detrimental impact upon the wetland, and the site will be restored as nearly as possible to its original condition.

No alternative which does not cross a wetland or has less detrimental impact on the wetland is feasible.

(d) Economic advantage alone is not reason for the proposed construction.

(3) The Planning Board, on their own or at the request of the Conservation Commission, may require the applicant to submit environmental studies when necessary to evaluate an application made under this section. The cost of these studies shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for the review of documents required by particular applications.

(4) The applicant shall file such information as the Planning Board reasonably requires in order to review an application for a Conditional Use Permit. Prior to the granting of a Conditional Use Permit under this section, the applicant shall agree to submit a performance Security Bond to the Planning Board. The Security Bond shall be submitted in a form and amount, with surety and conditions satisfactory to and approved by the Planning Board, to ensure that the construction has been carried out in accordance with the approved design. The Security Bond shall be submitted and approved prior to issuance of any permit authorizing construction.

(5) A Conditional Use Permit may be granted by the Planning Board only after due public notice and a public hearing on the application.

### C. Wetland Buffer

The following restrictions apply to the land surrounding wetlands which are not Prime Wetlands:

(1) No waste disposal systems for one or two family dwellings shall be located closer than seventy-five (75') feet to any wetland;

(2) No waste disposal systems for all uses other than those listed in the preceding section, shall be located closer than one hundred twenty-five (125') feet to any wetland.

(3) No buildings or parking lots shall be located closer than fifty (50') feet to any wetland 0.25 acre or larger in size.

(4) No buildings or parking lots shall be located closer than thirty (30') feet to any wetland 0.25 acre or smaller.

(5) Notwithstanding the above, no buildings or parking lots shall be located closer than seventy-five (75') feet to a wetland of any size if it has very poorly drained soils, is a bog, or is adjacent to a lake, pond, or perennial or intermittent stream.

(6) Where an existing use within the setback is destroyed or in need of extensive repair it may be rebuilt provided that such rebuilding is completed within one year of the event causing destruction, the new or rebuilt use shall not extend further into the wetland or setback area than the original use.

(7) All construction, forestry and agricultural activities within one hundred (100') feet of any wetland shall be undertaken with special care to avoid erosion and siltation into the wetlands. When deemed necessary, a Sediment and Erosion Control Plan approved by the Merrimack County Conservation District may be requested by the Planning Board or the Conservation Commission.

(8) No underground chemical or fuel tanks of any size shall be located within two-hundred (200') feet of any wetland.

#### D. Special Exceptions

(1) Upon application to the Board of Adjustment, a special exception shall be granted to permit any use which would be allowed in the zone in which the lot lies, but subject to the restrictions on the Wetland Buffer described in Section 17.04.02 C, and provided that all of the following conditions are found to exist:

(a) The lot upon which an exception is sought was an official lot of record, as recorded in the Merrimack County Registry of Deeds as of January 6, 1990.

(b) The use for which the exception is sought, after consideration of all practicable alternatives, cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District.

The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Article.

(d) The proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater, or other reason.

(e) Economic advantage alone is not reason for granting a special exception.

(2) The Zoning Board of Adjustment shall not grant a special exception until after notice, hearing, and comment by the Planning Board or the Conservation Commission as provided in Section 17.04.01 C above.

#### E. Filled Lands and Pre-existing Uses

(1) Lands, which may have been wetlands but were filled under properly issued State and Town permits granted prior to the adoption of this ordinance shall be classified according to the soils and flora existing at the site at the time application for building permit or subdivision is made.

(2) Structures and uses existing or shown on an approved site plan or described in an outstanding valid building permit as of January 6, 1990 may be constructed or continued provided that the building permit and any extensions of it have not expired and such use shall not be expanded to encroach further upon the wetlands or designated setback or Buffer areas, except as provided in this ordinance.

#### F. Exemption for Residential Structures

Notwithstanding other provisions of this Article, the construction of additions and extensions to one and two family dwellings shall be permitted within the Wetland Buffer as defined in Section 17.04.02 C provided that:

(1) The dwelling lawfully existed prior to January 6, 1990, and

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(2) The proposed construction conforms with all other applicable ordinances and regulations of the Town of Bow, and

(3) The proposed construction complies with the Wetlands Buffer provisions contained in Section 17.04.02 C, and

(4) The repair or reconstruction of an existing residential structure which lies in the Wetlands Buffer and which follows destruction or partial destruction of such structure will commence within two years of the date of destruction, and

#### 17.05 GENERAL PROVISIONS

Should any section or provision of this Article be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Article as a whole or any other part thereof.